IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3523 of 1992

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VAJSURBHAI T VALA - Petitioner
Versus
HEIRS AND L.R. OF THE DECEASED SURAGBHAI LAKHMANBHAI
Respondent(s)

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Appearance :

MR D.K.MEHTA FOR MR PV HATHI for Petitioner
MR NIKHIL JOSHI for MR PRADEEP PATEL for Respondents

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 05/07/2007

ORAL JUDGMENT

The petitioner-purchaser of the land survey No.284 paiki, situated at village Chalala, Tal.

Dhari, Dist: Amreli, has preferred the present petition under Articles 226 and 227 of the Constitution of India against the judgment and order dated 25th October, 1991 passed by the Gujarat Revenue Tribunal in Revision Application No.TEN B.R. 2 of 1987.

Facts leading to the present petition are as under :

The land survey No.284 paiki, admeasuring Acres-6-23 Gunthas, situated at village Chalala, Tal. Dhari, Dist : Amreli originally belonged to one Matra Rukhad. After the death of the said Matra Rukhad, the said land survey No.284 paiki devolved upon his wife Devubai. The said Devubai sold land admeasuring Acres 3-17 Gunthas out of the said survey No.284 paiki to the present petitioner by a registered sale deed dated 28th December, 1971. The present respondent Suragbhai Lakhmanbhai filed Application No.12 of 1981 under Section 32(1-B)of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as “the Act”) for restoration of possession of the land survey No.284 paiki. According to the said

Suragbhai Lakhmanbhai, on the tiller's day he was the tenant in land survey No.284 paiki. He was forcibly dispossessed in the year 1958. After that, part of the land admeasuring Acres 3-17 Gunthas was sold to the present petitioner. The respondent, therefore, claimed restoration of possession of the land survey No.284 paiki. The Mamlatdar, Dhari by his order dated 7th March, 1983 upheld the forcible dispossession of the tenant and illegal possession of the petitioner. He, therefore, directed vesting of the land in the State Government under Section 84-C of the Act. The said order was set aside by the Deputy Collector in Ganot Case No.13 of 1983 and the matter was remanded to the Mamlatdar. After the order of remand, the Application was once again decided by the Mamlatdar, Dhari by order dated 21/22nd March, 1985. The Mamlatdar held that out of the land survey No.284 paiki admeasuring Acres 6-23 Gunthas, land admeasuing Acre-1-06 Gunthas was acquired for the purpose of canal and land admeasuring Acres 3-17 Gunthas was sold to the petitioner by the above referred sale deed of 1971. The tenant was,therefore, restored possession of 2 Acres of land of survey

No.284 paiki.

Feeling aggrieved, the petitioner preferred Ganot Appeal No.8 of 1985 before the Deputy Collector. The Deputy Collector confirmed the findings recorded by the Mamlatdar and dismissed the appeal.

Feeling aggrieved, the petitioner preferred Revision Application before the Gujarat Revenue Tribunal which came to be dismissed on 25th October, 1991. Therefore, the present petition.

Mr. Mehta has submitted that the authorities below and the Tribunal have committed a grave error which has resulted into miscarriage of justice. He has submitted that the Application made by the tenant under Section 32 (1-B) of the Act was processed as if it were an application under Section 32 PPP of the Act. He has submitted that the tenant failed to establish the conditions precedent for maintaining an application under Section 32 PPP of the Act. Further, the tenant could have been restored possession of the land only in case it were in the hands of the landlord himself or his successor in interest as defined in Explanation to Section 32 (1-B) of the

Act. He has vehemently submitted that the petitioner had purchased from Bai Devubai the whole land of survey No.284 paiki and not merely a piece of land admeasuring Acres3-17 Gunthas. Once the land had been transferred to the petitioner in any manner other than inheritance (testamentary or by devolution), claim under Section 32 (1-B) of the Act for restoration of possession to the tenant under the said Section can not be maintained. In support of his arguments, Mr. Mehta has relied upon the judgment of this Court in the matter of **Chhotabhai H. Parmar through his heirs Rambhai v. Mahendrabhai G Patel 1997 (3) G.L.R. 2210** and of the Hon'ble Supreme Court in the matter of **Savliram Gotiram Teli (dceased) by heirs and LRS v. Madhukar Yeshwant Patankar (1996) 11 S.C.C. 28**.

The petition is contested by Mr. Joshi.

Chapter III of the Act comprising Sections 31 to 43 provide for special rights and privileges of tenants and provisions for distribution of land for personal cultivation. Section 32 (1-B) of the Act provides for restoration of possession of a land to a tenant who was in possession of the land on the

appointed day who was dispossessed of such land or any part thereof by the landlord at any time before the specified date. The 'appointed day' is defined in Clause (2B) of Section 2 of the Act to mean the 15th day of June, 1955. The 'specified day' is defined in Clause (16C) of Section 2 of the Act i.e. 3rd March 1973 (the date of coming into force of the Gujarat Act 5 of 1973).

In the matter of Chhotabhai H. Parmar (Supra), one of the questions was whether the person in possession of the land was the successor in interest of the landlord. In the said case, the tenant was dispossessed prior to the appointed day and that the person in possession had received the land in gift. Considering the explanation to Section 32 (1-B) of the Act, the learned Judge was pleased to hold that the person in possession was not the " succesor in interest" as envisaged by Section 32 (1-B) of the Act.

In the matter of Savliram Gotiram Teli (Supra), the question was whether the applicant-successor in interest of the tenant could maintain an application for restoration of possession of the land under

Section 32 (1-B) of the Act. The Hon'ble Supreme Court was pleased to hold that such application was maintainable.

Both the authorities below and the Tribunal have recorded a concurrent finding that the respondent-tenant was indeed in possession of the land survey No.284 paiki on the tiller's day and that he was dispossessed some time in the year 1958-1959. This finding has not been questioned by Mr. Mehta nor is there any material not to agree with the aforesaid finding of fact recorded by the Tribunal. It is also not in dispute that the petitioner did purchase the land bearing survey No.284 paiki by a registered sale deed dated 28th December, 1971. However, the dispute is whether the petitioner had purchased the entire land survey No.284 paiki admeasuring Acres 6-23 Gunthas or only a part of it. In the sale deed it is specifically stated that the vendor had sold Acres 3-17 Gunthas of land out of survey No.284 paiki. It is the case of the petitioner that the area Acres-3-17 Gunthas has been mentioned in the sale deed by mistake. In fact, the petitioner had purchased the entire land admeasuring Acres 6-23 Gunthas. As in

the sale deed, the area of the land sold is specifically mentioned as Acres 3-17 Gunthas, there is no reason to believe the petitioner's claim to the contrary. That is rightly not believed by the Tribunal and the authorities below. It has been observed that after exclusion of the land acquired for canal and the extent of the land purchased by the petitioner, still the land admeasuring 2 Acres remained which could be restored to the tenant. What the authorities below and the Tribunal have done is that the tenant is ordered to be restored possession of the said remaining 2 Acres of land. Evidently the land purchased by the petitioner is not ordered to be restored to the tenant. The question whether the petitioner can be said to be a “successor in interest” within the meaning of Section 32 (1-B) of the Act or not does not arise. As recorded hereinabove only that part of the land survey No.284 paiki which was not sold to the petitioner is restored to the tenant. It is apparent that the application made by the tenant was essentially processed as an application under Section 32 (1-B) of the Act. If at all the cause title suggests that it

was an application under Section 32PPP of the Act, the same is an inadvertent error.

Mr. Mehta has also submitted that indisputably the petitioner is in possession of the entire land of survey No.284 paiki including 2 Acres of land which is ordered to be restored to the tenant. If the possession of the petitioner of the said 2 Acres of land is believed to be illegal, then also the petitioner can not be asked to restore the possession thereof to the tenant unless the proceeding for summary eviction under Section 84 (C) of the Act is conducted. I believe the submission is too technical. Section 84 (C) of the Act provides for summary eviction of a person unauthorisedly occupying or wrongly in possession of any land. Now when the two authorities below, the Tribunal and this Court have held that the petitioner's possession of the aforesaid 2 Acres of land is unauthorised, the necessary consequence should be restoration of possession to the tenant. I, therefore, reject the contention.

No other contention is raised before me.

For the aforesaid reasons, the petition is

dismissed with costs. Rule is discharged. Interim relief stands vacated. The advocate's fee for the purpose of computation of cost shall be Rs.5,000/-.

(MS. R.M.DOSHIT,J.)

*mithabhai